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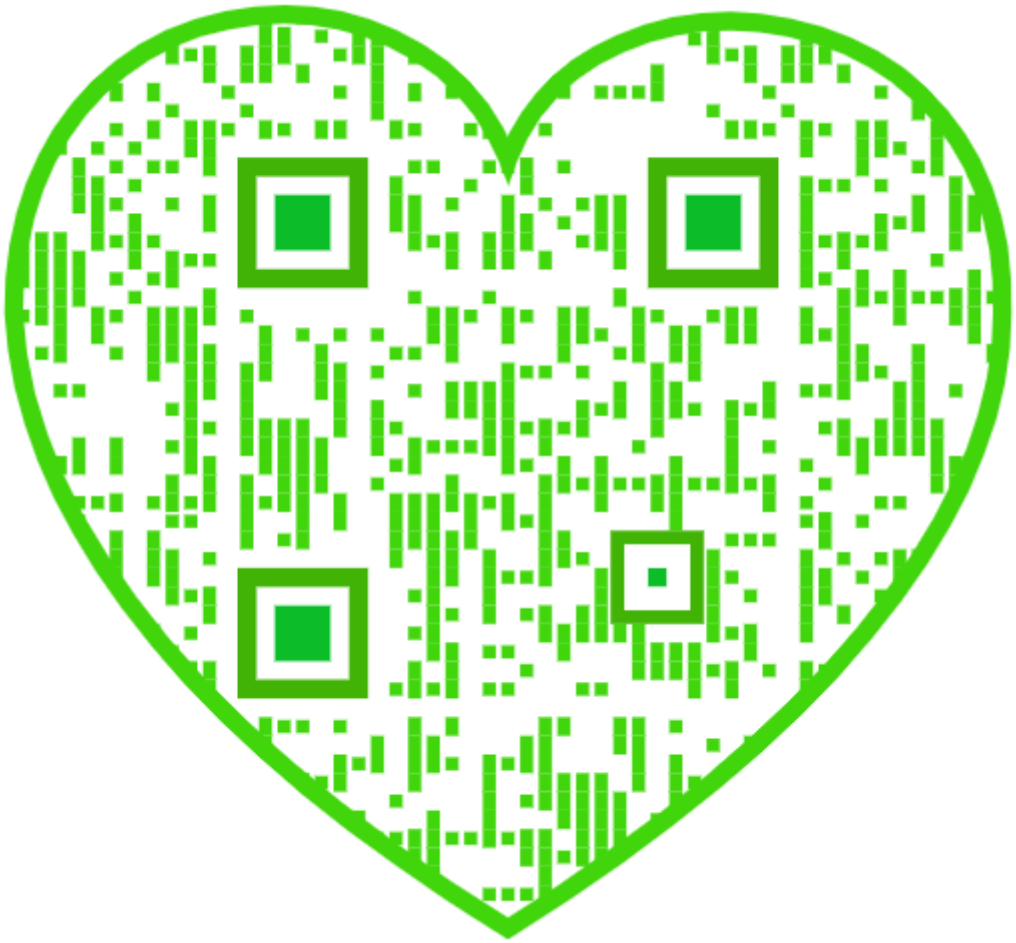

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PROFESSIONAL ETHICS.

BY J. C. BAYLES, NEW YORK CITY.

(Presidential Address, Pittsburgh Meeting, February, 1886.)

Gentlemen of the Institute: Having availed myself somewhat liberally during the past two years of the latitude which is accorded the president in the selection of the topics presented in addresses from the Chair, I do not need to plead safe precedent as my warrant for devoting to the consideration of some of the questions in casuistry the answers to which will be found to furnish a basis for a code of professional ethics, the address which marks the conclusion of my service in the dignified and honorable office to which, through your unmerited favor, I have been twice chosen. It is not asking too much of the engineer that his professional morality shall conform to higher standards than those which govern men who buy and sell with no other object than the getting of gain. The professional man stands in a more confidential relation to his client than is supposed to exist between buyer and seller in trade. He is necessarily more trusted, and has larger opportunities of betraying the confidence reposed in him than is offered the merchant or the business agent. For the reason that he cannot be held to the same strict accountability which law and usage establish in mercantile business, he is under a moral obligation to fix his own rules of conduct by high standards and conform to them under all circumstances. Whatever the measure of his professional success—whether wealth and reputation crown his career, or disappointment and poverty be his constant and unwelcome companions—no taint of suspicion should attach to any professional act or utterance. Not only should he be able to write above the wreck of bright hopes, "Honor alone remains," but upon his great and successful achievements should it be possible for others to inscribe the legend, "In honor wrought; with honor crowned."

It is frequently and confidently asserted that at no time in the history of the world were the standards of business honor so high as now. The prevalence of dishonesty, in one form or another, is held

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to show simply that there is a great deal of moral weakness which is unequal to the strain to which principle is subjected in the keenness of business competition, and in the presence of the almost unlimited confidence which apparently characterizes commercial intercourse. The enormous volume of the daily dealings on 'Change, where a verbal agreement or a sign made and recognized in the midst of indescribable confusion, has all the binding force of a formal contract; the real estate and merchandise transactions effected on unwitnessed and unrecorded understandings; the certification of checks on the promise of deposits or collateral, and a hundred other evidences of confidence are cited as proofs that the accepted standards of business honor are high, and are kept so by public opinion. All of this is true in a certain limited sense; but the confidence which is the basis of all business creates opportunities for dishonesty which changes its shape with more than Protean facility when detected and denounced. The keenness of competition in all departments of professional and business enterprise presents a constant temptation to seize every advantage, fair or unfair, which promises immediate profit. It is unfortunately true that the successful cleverness which sacrifices honor to gain, is more easily condoned by public opinion than honest dullness which is caught in the snares laid for it by the cunning manipulators of speculation. The man who fails to deliver what he has bought, to meet his paper at maturity and make good the certifications of his banker, loses at once his business standing and is practically excluded from business competition; but if he keeps his engagements and is successful, the public is kindly blind to the agencies he may employ to depreciate what he wants to buy or impart a fictitious value to what he has to sell. Viewed from this standpoint, it may be questioned whether the accepted standards of business morality are not, after all, those fixed by the revised statutes.

In so far as the engineer is brought in contact with the activities of trade, he cannot fail to be conscious of the fact that serious temptations surround him. Such reputation as he has gained is assumed to have a market value, and the price is held out to him on every side. It should not be difficult for the conscientious engineer, jealous of his professional honor, to decide what is right and what is not. He does not need to be reminded that he cannot sell his independence nor make merchandise of his good name. But as delicate problems in casuistry may mislead or confuse him, it is to be regretted that so little effort has been made to formulate a code of

professional ethics which would help to right decisions those who cannot reach them unaided.

Standing in the presence of so many of those who have dignified the profession of engineering, I should hesitate to express my views on this subject did I not believe that many earnest and right-minded young men in our active and associate membership will be glad to know what rules of conduct govern those whose example they would willingly follow, and how one not a practicing engineer, but with good opportunities of observation and judgment, would characterize practices which have been to some extent sanctioned by custom. To those who have yet to win the gilded spurs of professional knighthood, but who cherish a high and honorable ambition, my suggestions are chiefly addressed.

An ever-present stumbling block in the path of the young engineer is what is lightly spoken of as the "customary commission"—a percentage paid him on the price of machinery and supplies purchased or recommended by him. That manufacturers expect to pay commissions to engineers who are instrumental in effecting the sale of their products, is a striking proof that the standards of business morality are quite as low as I have assumed them to be: that engineers do not unite in indignant protests against the custom and denounce as bribe-givers and bribe-takers those who thus exchange services, shows that the iron has entered the souls of many who may be disposed to resent such plain terms as those in which I deem it my duty to describe transactions of this kind.

The young man who is tendered a commission will naturally ask himself whether he can accept and retain it, and may, perhaps, reason somewhat in this way: "My professional advice was given without expectation of personal profit other than that earned in my fee, and it expressed my best judgment. The price at which the goods were purchased was that which every consumer must pay, and was not increased for my advantage. The transaction was satisfactory to buyer and seller, and was concluded when payment was made. I am now tendered a commission which I am at liberty to accept or to decline. If I decline it I lose something, my client gains nothing, and the remaining profit to the seller is greater than he expected by that amount. If I accept it I do my client no wrong. If it is the custom of manufacturers to pay commissions, it must be the custom of engineers to receive them; and there is no reason why I should be supersensitive on a point long since decided by usage." This is false reasoning, based upon erroneous assumptions. Why

do manufacturers pay commissions? Is it probable they make it a part of their business policy to give something for nothing? Is it not certain that they expect an equivalent for every dollar thus disbursed, and that in paying the engineer a commission they are seeking to establish relations with him which shall warp his judgment and make him their agent? It may be urged in the case of reputable manufacturers that they yield to this custom because other manufacturers have established it, and that in following the pernicious example they have no other object than to equalize the influences tending to the formation of professional judgment. This reasoning does not change in the least the moral aspects of the question from the manufacturers' standpoint; but what engineer with a delicate sense of professional honor could offer or hear such an explanation, without feeling the hot blush of shame suffuse his cheeks? The plain truth about the commission is that the manufacturer or dealer adds it to the selling price of his goods, and the buyer unconsciously pays the bribe designed to corrupt his own agent. Can an engineer receive and retain for his own use a commission thus collected from his client without a surrender of his independence, and, having surrendered that, can he conscientiously serve the client who seeks disinterested advice and assistance in the planning and construction of work?

It is possible, perhaps, for a man to dissociate his preferences from his interests; so, also, is it possible for one to walk through fire and not scorch his garments; but how few are able to do it! The young man in professional life who begins by accepting commissions will soon find himself expecting and demanding them, and from that moment his professional judgment is as much for sale as pork in the shambles. I counsel the young man thus tempted to ask himself, Am I entitled to pay from the manufacturer who offers it? If so, for what? If not, will my self-respect permit me to become his debtor for a gratuity to which I have no claim? Does not this money belong to my client, as an overcharge unconsciously paid by him for my benefit? If I refuse it, can I not with propriety demand in future that the percentage which this commission represents shall be deducted in advance from the manufacturers' price, that my client may have the benefit of it? If this is denied, can I resist the conclusion that it is a bribe to command future services at my hands? Is not the smile of incredulity with which the dealer receives my assurance that I can only take it for my client and hand it over to

him, an insult to the profession, which, as a man of honor, I am bound to resent?

Gentlemen, it is not true that custom sanctions the acceptance of commissions by the engineer. That it is much too general I will not deny, but there are very few men of recognized professional standing who would confess that they have yielded to the temptation and retained for their own benefit the commissions received by them. I do not hesitate to give it as my opinion that the acceptance and retention of a commission is incompatible with a standard of professional honor to which every self-respecting engineer should seek to conform. Those who defend it as proper and right and plead the sanction of usage, are not the ones to whom the young engineer can safely go for counsel and advice. The most dangerous and least reputable of all the competition he will encounter in an attempt to make an honest living in the practice of his profession, is that of the engineer who charges little for professional services and expects to be paid by those whose goods are purchased on his recommendation.

With equal emphasis would I characterize as unprofessional the framing of specifications calling for patented or controlled specialties, when to deceive the client bids are invited. I am well aware that it is easier to procure drawings and specifications from manufacturers than to make them. Many manufacturers are very willing to furnish them, but those who do are careful to so frame the specifications that they can secure the contracts at prices to include the cost of the professional work for which the engineer is also paid. There is nothing unprofessional in recommending a patented article or process, if it be, in the judgment of the engineer, the best for the purpose to be accomplished; but he will do it openly and with the courage of his convictions. The young engineer should, I think, have no difficulty in recognizing the important difference which inheres in the methods by which a given result is accomplished.

In the relation of engineers to contractors, there is many a snare and pitfall for the unwary feet of the beginner. In superintending the construction of work the engineer may err on the side of unreasonable strictness, or on that of improper leniency. If so disposed he can involve any contractor in loss and do him great wrong, but it more often happens that the engineer is forced to assume a defensive attitude and to resist influences too strong for a man of average courage and strength of will, especially if his experience in charge of work is limited. He should enter upon the discharge of

his delicate and responsible duties with a desire to do impartial justice between client and contractor. He is warranted in assuming that his judgment and discretion are his chief qualifications for the position of supervising engineer, and that all specifications are designed to be in some measure elastic, since the conditions to be encountered in carrying them out cannot possibly be known in advance. He should not impose unnecessary and unreasonable requirements upon the contractor, even if empowered to do so by the letter of the specifications. The danger, however, is principally in the opposite direction. Frequently the engineer has all he can do to hold the contractor to a faithful performance of the spirit of his agreement. He is bullied, misled, deceived, and sometimes openly defied. He must constantly defend himself against charges impeaching his personal integrity and his professional intelligence. The contractor can usually succeed in making it appear that he is the victim of persecution, and especially in public work he is likely to have more influence than the engineer with those for whom the work is done. It often happens that the engineer, defeated and discouraged, gives up the unequal battle. From that moment he is of no further use as an engineer, and if he remains for an hour in responsible charge of work he cannot control he rates his fee as more desirable than a reputation unsullied by the stain of dishonor. He has a right to decline a conflict for which he feels unequal, but he has no right to consent to a sacrifice of the interests of his client while he is paid to protect them. The questions of professional ethics arising out of the relations between the engineer and the contractor are much too complex to be decided by an inflexible rule of professional conduct, but the engineer cannot make a mistake in refusing to remain in responsible charge of work when, by remaining, he must give consent to that which his judgment tells him involves a wrong to his client. With equal confidence may it be asserted that the engineer who secretly participates in the profits of the contractor, whatever the arrangement by which such participation is brought about, sacrifices his professional standing.

In making reports for contingent fees or fees of contingent value, the young engineer needs to exercise great discretion. This may be done without impropriety if done openly; but it is safe to assume that few opportunities will come to the young man with a reputation still to make, in which he can do clean and creditable work on any such basis. The engineer called upon to make a report for a fee in stock which depends for its value upon the effect of his report

in creating confidence in the public mind, takes a fearful risk. However honest he may be, he places himself in a position in which the danger is obvious and the advantage uncertain. If, having a contingent interest in the result of his work, he is afraid to say so in his report, he may safely consider his position unprofessional and unsafe. Contingent fees are a delusion and a snare, and in making it a rule to refuse them the young engineer will be likely to gain more than he loses.

Reports intended to influence the public upon subjects concerning which the engineer knows himself unqualified to speak with authority, are to be classed with other forms of charlatanry. No man can claim infallibility of judgment, nor is this expected of the engineer, whatever his position; but those who pay for professional services have a right to demand that the man who assumes to speak as an expert shall have the special knowledge which will command for his opinion the respect of those who are well informed. I consider it unprofessional for the engineer to enter upon the discharge of any duties for which he knows he is not qualified, if for the satisfactory discharge of those duties he must assume a knowledge he does not possess. There has been an immense amount of unprofessional work done in the field of reporting, and many reputations have been blasted by a failure to draw nice distinctions in questions of professional honor. The young engineer cannot be too careful in this matter, and he will be fortunate if with all the prudence he can exercise he is able to avoid disaster. Of a professional reputation dependent upon the accuracy as well as the honesty of reports ordered and used for speculative purposes, one may say, as a marine underwriter lately said of an unseaworthy steamer, that he "would not insure her against sinking, from Castle Carden to Sandy Hook with a cargo of shavings."

In the matter of expert service in the courts I am disposed to speak guardedly. I see no reason why an engineer should not willingly go upon the witness-stand to give expert testimony if he has made proper preparation and has an honest conviction that his testimony can be given with a conscientious regard for the obligations of his oath as a witness. It is his duty and his privilege to defend his opinions, for the man without opinions which he is prepared to defend is worthless as a witness, and cannot properly be called an expert. But the conscientious engineer has no right to appear as a partisan of anything except what he believes to be the truth. If he finds himself parrying the questions of the cross-examination with a

view to concealing the truth; if he realizes that he is a partisan of the side which retains him, and feels a temptation to earn his fee by falsehood, concealment or evasion, he can be sure that he is in a position in which no man of honor has a right to be. The abuses of expert testimony in civil and criminal suits are many and grave; its uses are perhaps exaggerated, and the witness stand is not an inviting field for the young engineer seeking a satisfactory career.

How far an engineer can properly use for his own advantage information gained in the discharge of duties of a confidential nature, is a question at once delicate and difficult. He cannot help knowing what he has learned, and his knowledge is his capital. He must be governed in this matter by the considerations which influence men of honor in the ordinary relations of life. Stock and real estate operations on confidential information which belongs to one's principles, are usually in violation of the simplest rules of professional honor. The manager who advises his brokers by telegraph and his principals by mail cannot, I think, claim to have a very delicate sense of right and wrong. He can judge his own conduct by the standard he would apply in judging like infidelity on the part of those employed by him.

In professional criticism of professional work it is easy to fall into ways which are wrong, morally and professionally. Criticism which is designed merely to advertise the critic serves no good purpose, and savors of charlatanry or something worse. Only a small proportion of the current critical literature of engineering has any other object than to help the critics to climb into notoriety on the shoulders of the abler and wiser men with whom they are brought into competition. I regard as unprofessional every effort to discredit honest and intelligent work, and every form of disguised advertising designed to give an engineer a greater prominence than he has earned by successful and creditable work, or is entitled to claim by virtue of fitness for more than average professional achievements.

It is neither possible nor desirable to catalogue the unprofessional practices which in one way or another come to the notice of those observant of current happenings in the several departments of engineering. It is the contention of some that right and wrong are relative terms, applying to no action or line of conduct save as it is considered in relation to coincident and contingent circumstances. I will not deny that this may be true of all professional acts, but the impossibility of an arbitrary classification under the heads right

and wrong, honorable and dishonorable, need not make it difficult for a man to formulate a code of professional ethics by which his own conduct shall be governed. There are certain broad ethical principles which never change. One is, that a man cannot serve two masters having conflicting interests and be faithful to each. Another is, that, however skillfully one may juggle words to conceal meanings or evade responsibility, if the intent to deceive is there he lies. Professional ethics are no different from the ethics of the Decalogue; they are specific applications of the rules of conduct which have governed enlightened and honorable men in all ages and in all walks of life. It is only when the moral sense is blunted, or temptation presents itself in some new and unrecognized form, that it is difficult to draw the line between right and wrong. I am aware that a delicate sense of honor often comes between a man and his opportunities of profit, and that a fine sensitiveness is rarely appreciated at its value by those who employ professional service. I know that in this busy world, men of affairs do not always stop to weigh motives, and that confident assurance often commands respect, while modest merit is distrusted. But I do not know that a man can sell his honor for a price and retain thereafter the right to stand erect in the presence of his fellows. I do not know that any engineer can make for himself a creditable and satisfactory career of whom it cannot be said that, whatever his mistakes or successes, his failures or triumphs, he has held his professional honor above suspicion.

Since this address was written, my attention has been called to the fact that at the Bethlehem Meeting, in August, 1871, Mr. R. P. Rothwell presented a paper on "Professional Morality." This paper was not printed in the *Transactions*, or mentioned with Mr. Rothwell's other papers in the general index. If time had permitted, I should have selected another theme for discussion; but as Mr. Rothwell's able paper is found only in an early volume of *The Engineering and Mining Journal*, is not easily accessible, and has probably never been seen by the younger members, for whom my remarks were especially intended, it can scarcely be considered a prior publication of the Institute. So far as Mr. Rothwell's paper relates to the subjects treated in the above address, it presents views generally similar to those I have expressed, a coincidence which is not at all surprising. I have not, however, had occasion to quote his paper, as I am indebted to it only in the pleasure I experienced in reading it subsequent to the delivery of the address.

J. C. B.

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